

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OLIVIA RUX, et. al.,

Case No. 08 Civ. 6588 (AKH)

Petitioners,

-against-

ABN-AMRO BANK N.V., AMERICAN
EXPRESS BANK LTD., BANK OF NEW YORK,
BANK OF CHINA, CITIBANK, N.A.,
DEUTSCHE BANK A.G., HSBC BANK USA,
N.A., and JPMORGAN CHASE BANK, N.A.,

**KFW BANK'S CLAIM TO
BLOCKED FUNDS AND
OBJECTION TO TURNOVER**

Respondents.

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JPMORGAN CHASE BANK, N.A.,

Third-Party Petitioner,

-against-

THE REPUBLIC OF SUDAN, et. al.

Third-Party Respondents.

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Third-Party Respondent, KfW BANK ("KfW"), sued herein as Kreditanstalt Fur Wiederaufbau (KfW), by undersigned counsel, hereby objects to the turnover to Petitioners of blocked assets belonging to KfW that were held in accounts at Respondent/Third-Party Petitioner JPMORGAN CHASE BANK, N.A., including blocked deposit accounts and blocked wire transfers.

1. KfW is a public law institution established under the laws of the Federal Republic of Germany with its statutory seat in Frankfurt, Germany.

2. On or about April 29, 2005, JPMorgan Chase Bank, N.A. (“JPMCB”) blocked a wire transfer in the amount of \$150,000.00 from KfW’s account with JPMCB in New York (the “Blocked Funds”). The particulars of the blocked funds transfer are set forth below:

Originator:	KFW Frankfurt
Originating Bank:	KFW Bakengruppe
Value Date:	29-APR-05
Amount:	USD 150,000.00
Beneficiary Bank:	Fortis Bank (Nederland) NV, Amsterdam
Beneficiary:	Aircraft Financing and Trading BV
Wire Instructions:	Remarketing fee with respect to the sale of MSN20247 (aircraft) to Sudan Airways

3. The Blocked Funds were intended for Aircraft Financing & Trading B.V. (“AFT”), a Dutch company with its registered seat in Amsterdam, Netherlands.

4. The Blocked Funds were to be transferred to AFT through its bank, Fortis Bank Nederland N.B., in Amsterdam, Netherlands.

5. The Blocked Funds were to be transferred to AFT pursuant to a certain agreement among AFT, DaimlerChrysler Aerospace AG and KfW dated October 22, 2002 (the “Technical Assistance Agreement”).

6. Neither the Government of Sudan nor any other blocked entity is a party to the Technical Assistance Agreement.

7. The Blocked Funds are the sole property of KfW as set forth in the accompanying affidavit of Thomas Brehler.

8. The Blocked Funds are not the property of the Government of Sudan, Sudan Airways, or any other blocked entity.

9. Neither the Government of Sudan or any other blocked entity is the beneficiary of the Blocked Funds or the blocked wire transfer.

10. AFT, the intended beneficiary of the Blocked Funds is beneficially owned entirely by persons who are citizens of the Netherlands.

11. Neither KfW nor AFT is an agency or instrumentality of the Government of Sudan, Sudan Airways, or any other blocked entity.

12. The Petitioners have a judgment *against the Government of Sudan*, and seek to attach the Blocked Funds and certain other blocked assets held by JPMCB to satisfy said judgment against the Government of Sudan.

13. Given that the Blocked Funds are not owned by the Government of Sudan or other blocked entity (but owned solely by KfW), they are not attachable under the Terrorism Risk Insurance Act (“TRIA”), 28 U.S.C. 1610 note. See U.S. Department of Justice Letter to the Hon. Alvin K. Hellerstein, dated August 22, 2008, at 3 (Docket Entry #11) (“USDOJ Letter”).

14. As set forth in the USDOJ Letter, the Office of Foreign Assets Control’s “broad regulatory” interpretation of the Sudanese sanctions regulations often leads to the blocking of assets that are not owned by the Government of the Sudan and that “are not subject to execution or attachment by plaintiffs because they are not assets of the Government of Sudan.” (USDOJ Letter, at 3).

WHEREFORE, given that the blocked assets at issue here are not subject to execution

or attachment by Petitioners because they are not assets of the Government of Sudan, but are solely owned by KfW, KfW objects to the turnover of such assets to the Petitioners herein and demands the return of such funds to KfW.

Dated: November 14, 2008
New York, New York

KEATING & McHUGH

By /s/
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